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PATENT APPLICATION
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IN THE
UNITED STATES PATENT AND TRADEMARK OFFICE

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Application No.: 10/023,951

Examiner: James Hannett

Filing Date: 12/21/2001

AUG 17 2006

Group Art Unit: 2622

Title: Remote High Resolution Photography and Video Recording Using a Streaming Video as a View-Finder

Mail Stop Appeal Brief-Patents
Commissioner For Patents
PO Box 1450
Alexandria, VA 22313-1450

TRANSMITTAL OF APPEAL BRIEF

Sir:

Transmitted herewith is the Appeal Brief in this application with respect to the Notice of Appeal filed on 06/20/2006.

The fee for filing this Appeal Brief is (37 CFR 1.17(c)) \$500.00.

(complete (a) or (b) as applicable)

The proceedings herein are for a patent application and the provisions of 37 CFR 1.136(a) apply.

() (a) Applicant petitions for an extension of time under 37 CFR 1.136 (fees: 37 CFR 1.17(a)-(d) for the total number of months checked below:

() one month	\$120.00
() two months	\$450.00
() three months	\$1020.00
() four months	\$1590.00

() The extension fee has already been filled in this application.

(X) (b) Applicant believes that no extension of time is required. However, this conditional petition is being made to provide for the possibility that applicant has inadvertently overlooked the need for a petition and fee for extension of time.

Please charge to Deposit Account 08-2025 the sum of \$500.00. At any time during the pendency of this application, please charge any fees required or credit any over payment to Deposit Account 08-2025 pursuant to 37 CFR 1.25. Additionally please charge any fees to Deposit Account 08-2025 under 37 CFR 1.16 through 1.21 inclusive, and any other sections in Title 37 of the Code of Federal Regulations that may regulate fees. A duplicate copy of this sheet is enclosed.

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Inventor.....Pere Obrador et al.
Assignee..... Hewlett-Packard Development Company, L.P.
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Examiner..... James M. Hannett
Attorney's Docket No..... PDNO. 10007843-1
Confirmation No..... 7670
Title: Remote High Resolution Photography and Video Recording Using a Streaming
Video as a View-Finder

BRIEF OF APPELLANT

To: Mail Stop Appeal Brief-Patents
Commissioner of Patents
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Appellant appeals from the Office Action mailed March 20, 2006 (hereinafter "Office Action" or "Action"). The Commissioner is authorized to charge the fee required under 37 C.F.R. § 41.20(b)(2) to Deposit Account No. 08-2025.

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I. REAL PARTY IN INTEREST

The real party in interest of this application is Hewlett-Packard Development Company, L.P. as evidenced by the full assignment of the pending application to Hewlett-Packard Company recorded starting at Reel 013444, Frame 0274, and the full assignment to Hewlett-Packard Development Company, L.P. recorded starting at Reel 014061, Frame 0492, in the Assignment Branch of the Patent and Trademark Office. The Hewlett-Packard Development Company, L.P., is a limited partnership established under the laws of the State of Texas and having a principal place of business at 20555 S.H. 249 Houston, TX 77070, U.S.A. (hereinafter "HPDC"). HPDC is a Texas limited partnership and is a wholly-owned affiliate of Hewlett-Packard Company, a Delaware Corporation, headquartered in Palo Alto, CA. The general or managing partner of HPDC is HPQ Holdings, LLC.

II. RELATED APPEALS AND INTERFERENCES

Appellant, Appellant's undersigned legal representative, and the assignee of the pending application are aware of no appeals or interferences which will directly affect, be directly affected by, or have a bearing on the Board's decision in the pending appeal.

III. STATUS OF THE CLAIMS

Claims 1-15, 22-23, 26-27 and 29-49 are pending. Claims 1-15, 22-23, 26-27 and 29-49 stand rejected. Appellant appeals the rejections of claims 1-15, 22-23, 26-27 and 29-49.

IV. STATUS OF AMENDMENTS

No amendments have been filed after the Office Action mailed March 20, 2006.

V. SUMMARY OF CLAIMED SUBJECT MATTER

Concise explanations of the subject matter defined in each of the independent claims and argued dependent claims involved in the appeal follow with respect to exemplary illustrative embodiments of the specification and figures.

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Referring to independent claim 1, connection of a remote device to one or more camera is described with respect to step 410 of Fig. 4 in one embodiment. A video generated by a camera is illustrated as reference 120 in Fig. 1 in one embodiment. According to one example, acquiring a high resolution photograph is described with respect to step 420 of Fig. 4. Processing and transmitting the video and photograph are described with respect to step 430 of Fig. 4 in one embodiment.

Referring to independent claim 11, acquisition devices are shown as references 240 in the example embodiment of Fig. 2. A network is depicted in the illustrated example of Fig. 2 as reference 230 while remote devices are shown as references 220 or 222.

Referring to claim 26, connection of a remote device to one or more camera is described with respect to step 410 of Fig. 4 in one embodiment. A video generated by a camera is illustrated as reference 120 in Fig. 1 in one embodiment. According to one example, acquiring a high resolution photograph is described with respect to step 420 of Fig. 4. Processing and transmitting the video and photograph are described with respect to step 430 of Fig. 4 in one embodiment. Communicating a command and altering an operation of the camera is described at step 420 of Fig. 4 and steps 540, 550 of Fig. 5 in two examples.

Referring to dependent claim 27, video and photographs are stored at step 440 after transmission at step 430 in one embodiment.

Referring to independent claim 30, logging onto a device from a remote device is described at steps 510 and 520 according to one embodiment. A video generated by a camera is illustrated as reference 120 in Fig. 1 in one embodiment. According to one example, acquiring a high resolution photograph is described with respect to step 420 of Fig. 4. Receiving a high resolution photograph from the network is described with respect to step 560 of Fig. 5 in one embodiment.

Referring to independent claim 34, a remotely located camera is illustrated as a reference 240 in the example of Fig. 2. A video generated by a camera is illustrated as reference 120 in Fig. 1 in one embodiment. Coupling of a remote device to one or more camera is described with respect to step 410 of Fig. 4 in one embodiment. Communication of live video data is described with respect to pipeline 320 of Fig. 3a in one embodiment. Outputting a command from the remote device

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and altering capturing of live video data are described with respect to step 416 of Fig. 4 in one embodiment. Providing still image data is described at step 420 in one embodiment. Communication of the still image data is described with respect to step 430 in one embodiment.

Referring to dependent claims 35, 37, 39, 42, and 46, a high resolution photograph 110 having a resolution greater than a resolution of video 120 is described in one embodiment with respect to Fig. 1.

Referring to dependent claim 36, a communications channel and pipeline comprising different physical media are shown in Fig. 3a with respect to references 310, 320 in one embodiment.

Referring to dependent claims 38, 41, 43, 46, and 47 acquiring a photograph or providing still image data during capturing live video data or generating of video is described with respect to step 420 of Fig. 4 in one embodiment.

Referring to claim 40, parallel processing and transmission of a photograph and video are described with respect to references 310, 320 of Fig. 3a in one embodiment.

Referring to dependent claim 45, different physical media are shown in Fig. 3a with respect to references 310, 320 in one embodiment.

Referring to claims 48-49, one embodiment of acquisition of high resolution photographs prior to storage is described at the method of Fig. 4 including steps 420-440.

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

- A. The 103 rejection of claims 1-15, 22-23, 26-27 and 29-49.
- B. The 103 rejection of claims 1-10, 22-23, 26-27, 35-36, 38-40, and 44-45.
- C. The 103 rejection of claims 11-15, 29, 37, and 46-48.
- D. The 103 rejection of claims 30-33 and 41-42.
- E. The 103 rejection of claims 34, 43 and 49.
- F. The 103 rejection of claim 27.

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- G. The 103 rejection of claims 34, 35, 37, 39, 42, and 46.
- H. The 103 rejection of claims 36 and 45.
- I. The 103 rejection of claims 38, 40, 41, 43, 44, and 47-49.
- J. The 103 rejection of claims 38, 41, 43, 44, and 47.
- K. The 103 rejection of claim 46.
- L. The 103 rejection of claims 48-49.

VII. ARGUMENT

A. There is insufficient motivation to combine the teachings of Ramsubramanian with the teachings of Mottur and the 103 rejection of all pending claims is improper for at least this reason.

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. See, e.g., MPEP §2143 (8th ed., rev. 2).

Referring to claim 1, Appellants respectfully submit there is insufficient motivation to combine the reference teachings in support of the rejection and the Office has failed to establish a *prima facie* 103 rejection for at least this reason.

Mottur is directed towards enabling a user to control a remotely located camera. The control enables the users to overcome problems in the art (see paragraph [0005] wherein a subject is out of the field of view of the camera or a subject may move out of the field of view and the monitoring function of the camera is lost). Further, Mottur is directed towards overcoming problems in the art wherein control of camera motion is limited as well as reducing or minimizing delays in broadcasts of information. Id.

The Office states on page 3 of the Action that the combination of Ramsubramanian and Mottur is appropriate to select and download a high-resolution

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still image of Ramsubramanian so that a user can obtain a snapshot having a size and quality that is superior to a low-resolution video image. Appellants respectfully submit that the alleged motivational rationale presented by the Office fails to support a proper *prima facie* 103 rejection of the claims as set forth by applicable authority.

In particular, MPEP 2142 (8th ed., rev. 3) states that the concept of *prima facie* obviousness allocates who has the burden of going forward with production of evidence in each step of the examination process and the *examiner bears the initial burden of factually supporting any prima facie conclusion of obviousness*. The examiner bears the initial burden of factually supporting any *prima facie* conclusion of obviousness, that is, the initial burden is on the examiner to provide some suggestion of the desirability of doing what the inventor has done. MPEP §2142 (8th ed., rev. 3).

The Federal Circuit discussed proper motivation *In re Lee*, 61 USPQ 2d 1430 (Fed. Cir. 2002). The Court in *In re Lee* stated the factual inquiry whether to combine references must be thorough and searching. It must be based on objective evidence of record. The Court in *In re Fritch*, 23 USPQ 2d 1780, 1783 (Fed. Cir. 1992) stated motivation is provided only by showing some objective teaching in the prior art or that knowledge generally available to one of ordinary skill in the art would lead that individual to combine the relevant teachings of the references. The *Lee* Court stated that the Examiner's conclusory statements in the *Lee* case do not adequately address the issue of motivation to combine. The Court additionally stated that the factual question of motivation is material to patentability and *can not be resolved on subjective belief and unknown authority*. The Court also stated that *deficiencies of cited references cannot be remedied by general conclusions about what is basic knowledge or common sense but rather specific factual findings are needed*. The Court further stated that *the determination of patentability must be based on evidence*. MPEP 2143.01 (8th ed., rev. 3) cites *In re Lee* and states the importance of relying upon objective evidence and making specific factual findings with respect to the motivation to combine references.

Ramsubramanian is directed towards arrangements wherein low resolution video data is transmitted at col. 1, lines 65+ and video data is transmitted at resolutions lower than the capabilities of the viewing device per col. 1, lines 26+.

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Ramsubramanian is concerned with the ability to provide snapshots of size and quality not limited by bandwidth restrictions in the low resolution video arrangements disclosed in Ramsubramanian. However, Mottur discloses arrangements which communicate uncompressed high resolution video data including for example high-definition digital television per paragraph 0023. Mottur discloses at paragraph 0024 transmitting uncompressed audio and video data using high bandwidth media such as fiber optic cable. Appellants respectfully submit the low resolution, low bandwidth arrangements for communicating video in Ramsubramanian, and the solution of Ramsubramanian to provide a higher resolution snapshot do not exist in the high bandwidth, high definition arrangements of Mottur. Appellants respectfully submit that the alleged advantages of receiving a high resolution image per Ramsubramanian in the limited bandwidth communication medium of Ramsubramanian are irrelevant to the high bandwidth, high definition application of Mottur which illustrates the erroneous combination of reference teachings in support of the 103 rejection.

In addition, Appellants respectfully submit the additional motivational rationale on page 7 of the Office Action stating that it would have been obvious to combine the references since it is preferable to include a snapshot function because often users like to have the ability to review a single frame of video is insufficient. However, the snapshot function referred to by the Office is *only "preferably" to the Ramsubramanian specification and teachings which are directed towards entirely different arrangements of Mottur*. Ramsubramanian is directed to streaming video previously stored in a video file 104 per col. 3, lines 50+ while Mottur is directed towards providing users with remote control access of a remote video camera per paragraph 0006. There is no objective evidence to support motivation to modify the remote control of video camera teachings of Mottur directed towards high resolution, high bandwidth implementations with the ability to provide high resolution snapshots from a low resolution source. There is no objective evidence of any improvement to the prior art resulting from the combination of the plural references directed to different, disparate implementations operating for different purposes. Appellants respectfully submit the combination of references is inappropriate in view of authority which provides the mere fact that references *can* be combined or modified does not render the resultant combination obvious *unless*

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the prior art also suggests the desirability of the combination. MPEP §2143.01III (8th ed., rev. 3) *citing In re Mills*, 916 F.2d 680, 16 USPQ2d 1430 (Fed. Cir. 1990).

Referring to the explicit teachings of Mottur, the Mottur disclosure is concerned with real time monitoring (see paragraph 0005). Mottur is concerned with overcoming problems in the art of allowing a user to control movements of a *video camera to provide real time monitoring of a subject* when the subject is out of view or moves out of view. Mottur is not concerned with providing a snapshot of the subject and such is irrelevant inasmuch as Mottur already provides a solution for permitting movement of the camera responsive to user control to provide the desired real time monitoring of Mottur. *There is absolutely no evidence that Mottur is concerned with or would benefit from modifications to accommodate still images.*

Apart from bald cursory statements only relevant to the teachings of Ramsubramanian and of no relevance or concern to the problems being overcome by Mottur, the Office has failed to recite any evidence of record to support the combination and accordingly the motivation is merely a subjective unsupported opinion of the Examiner. To the contrary of a position to modify Mottur to provide still images, explicit teachings of Mottur at paragraph 0005 make clear that Mottur is concerned with solving problems of reducing "choppy broadcasts" and making *video seamless* as opposed to providing still pictures as baldly alleged by the Office. Even if Mottur were modified as alleged by the Office, no solution to a problem of Mottur would be provided or facilitated by the modification since Ramsubramanian is concerned with problems of no relevance to the problems of Mottur. The bald allegation that it is preferable to provide a snapshot function is disputed by Appellants inasmuch as Mottur is not concerned with snapshots but with real time video monitoring of a subject.

In sum, Ramsubramanian and Mottur are directed towards entirely different systems including low resolution, low bandwidth implementations of Ramsubramanian versus the high bandwidth, high definition implementations of Mottur. Mottur is not concerned with ability to provide high resolution snapshots of the low resolution video inasmuch as Mottur provides high resolution video content and there is no evidence of record that any improvement to the art would result from modifying Mottur to accommodate snapshots. There is no evidence of record

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to support the subjective conclusory statement of the Examiner in support of the combination of reference teachings. The only motivation presented in the Office Action is based upon the Examiner's subjective belief or unknown authority which is insufficient as clearly held by the applicable authority.

Appellants respectfully submit that one concerned with the high resolution video monitoring of Mottur would not be motivated to look to Ramsubramanian for meaningful teachings regarding use of low resolution video and the provision of snapshots having increased resolution in view of the high resolution embodiments already provided by Mottur. Appellants submit that the alleged motivation presented by the Examiner, if deemed sufficient, would open the door to numerous combinations of any art which would expand the capabilities of the reference being modified even though the expanded capabilities are not relevant to the problems or solutions of the reference being modified. Appellants submit that the mere combination of reference teachings to expand the capabilities of the disclosure being modified in a manner of no concern to the subject matter or problems of the disclosure being modified would effectively eliminate the requirement to provide proper motivational rationale to formulate a proper 103 rejection. The courts have not eroded or eliminated the requirement for proper motivation and have clearly stated that proper motivation must be supported by objective evidence of record and may not be based upon the subjective belief of the Examiner or unknown authority.

Referring to page 2 of the Action, the Office alleges in support of motivation to combine the references that Mottur teaches *transmitting low resolution video to remote users*. Appellants respectfully submit that such is incorrect as disclosed at paragraphs 0023, 0024 where Mottur clearly teaches communication of uncompressed data, high definition data, and high bandwidth transmission capabilities using for example fiber optic cable. The motivation set forth by the Office is insufficient inasmuch as Mottur already positively discloses high bandwidth, high resolution communications and the teachings of Ramsubramanian regarding providing high resolution content of low resolution video are irrelevant. There is no evidence that a combination of the references would provide any enhancement to the high definition, video teachings of Mottur to motivate one of skill in the art to combine the reference teachings.

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Mottur discloses a system to avoid choppy video per paragraph 0005 and to provide a user with control of a remotely located camera. Mottur discloses communication of high resolution video data using high bandwidth transmission media. There is no evidence of record of any deficiencies in the Mottur system which would be improved by the combination proposed by the Office to motivate one to combine the reference teachings. There is no evidence of record that one of skill in the art would be motivated to combine Mottur's high bandwidth, high resolution video implementations with Ramsubramanian's embodiment of low bandwidth, low resolution video implementations. There is no evidence that the system of Mottur would be enhanced by the modification proposed by the Office or that any improvement in the art would result from the combination.

Appellants also submit that significant modification would be required for the remote control camera embodiment of Mottur to include the snapshot capabilities of Ramsubramanian with no improvement or benefit to the remote control camera operation of Mottur. The proposed modification or combination of the prior art would require substantial reconstruction or redesign of the reference teachings and/or would change the principle of operation of the prior art. According to the MPEP, the teachings of the combined references are not sufficient to render the claims *prima facie* obvious. MPEP 2143.01 VI (8th ed. rev. 3) citing *In re Ratti*, 270 F.2d 810, 123 USPQ 349 (CCPA 1959). The *In re Ratti* court reversed a PTO 103 rejection because the suggested combination of references would require a substantial reconstruction and redesign of the elements shown in the primary reference as well as a change in the basic principle under which the primary reference construction was designed to operate. In particular, the basic principle of Mottur is to provide remote control of a camera and there is no objective evidence to support the change of principle of Mottur and associated significant redesign to enable transmitting snapshots.

Appellants respectfully submit the Office has failed to meet its burden of establishing a proper *prima facie* 103 rejection of the claims and Appellants respectfully request withdrawal of the 103 rejection in the next Action for at least this reason.

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B. Positively-recited limitations of claims 1-10, 22-23, 26-27, 35-36, 38-40, 44 and 45 are not disclosed nor suggested by the prior art even if the teachings of Ramsubramanian are combined with the teachings of Mottur.

Appellants respectfully submit that positively-recited limitations of the claims are not disclosed nor taught by the prior art even if the teachings of Ramsubramanian are combined with the teachings of Mottur and the Office has failed to establish a proper *prima facie* 103 rejection of the claims for at least this reason.

The claims recite generating a video of a scene using a photo-video acquisition device individually comprising a camera, acquiring a high resolution photograph using the video streamed from the device (camera) as a view-finder and processing and transmitting the video and the high resolution photograph. These limitations are not disclosed nor suggested by the prior art even if the references are combined and the Office has failed to establish a proper *prima facie* 103 rejection for this additional reason.

Mottur teaches enabling a user to control a remotely located camera per paragraphs 0038, 0039. To the contrary, Ramsubramanian is directed with playback of video from a previously stored video file 104 as disclosed at col. 3, lines 55+ and fails to disclose or suggest a camera which generates video. Ramsubramanian discloses provision of snapshots of frames of the previously generated and stored video file 104. *The combined teachings of Ramsubramanian and Mottur disclose snapshots of previously generated and stored video which is being played back* which fails to disclose or suggest the claimed generating the video of the scene using a camera in combination with the claimed acquiring a photograph from the remote device using the video streamed from the device (camera) as a viewfinder and the processing and transmitting of the video and photograph from the device (camera).

Positively-recited limitations of the claims are not disclosed nor suggested by the prior art even if the references are combined and Appellants respectfully submit the Office has failed to establish a proper *prima facie* 103 rejection for this additional reason.

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C. Positively-recited limitations of claims 11-15, 29, 37, and 46-48 are not disclosed nor suggested by the prior art even if the teachings of Ramsubramanian are combined with the teachings of Mottur.

Appellants respectfully submit that positively-recited limitations of the claims are not disclosed nor taught by the prior art even if the teachings of Ramsubramanian are combined with the teachings of Mottur and the Office has failed to establish a proper *prima facie* 103 rejection of the claims for at least this reason.

The claims recite *one or more photo-video acquisition devices, which are defined as video cameras capable of acquiring videos and high resolution photographs* in combination with a remote device capable of acquiring the high resolution photographs *using videos streamed from the one or more photo-video acquisition devices (video cameras) as a view finder*. These limitations are not disclosed nor suggested by the prior art even if the references are combined and the Office has failed to establish a proper *prima facie* 103 rejection for this additional reason.

Mottur teaches enabling a user to control a remotely located camera per paragraphs 0038, 0039. To the contrary, Ramsubramanian is directed with playback of video from a *previously stored video file 104* as disclosed at col. 3, lines 55+ and fails to disclose or suggest a *video camera*. Ramsubramanian discloses provision of snapshots of frames of the previously generated and stored video file 104. *The combined teachings of Ramsubramanian and Mottur disclose snapshots of previously generated and stored video which is being played back* which fails to disclose or suggest the claimed video cameras capable of acquiring videos and high resolution photographs in combination with a remote device capable of acquiring high resolution photographs using videos streamed from the one or more video cameras as a view finder.

Positively-recited limitations of the claims are not disclosed nor suggested by the prior art even if the references are combined and Appellants respectfully submit the Office has failed to establish a proper *prima facie* 103 rejection for this additional reason.

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D. Positively-recited limitations of claims 30-33 and 41-42 are not disclosed nor suggested by the prior art even if the teachings of Ramsubramanian are combined with the teachings of Mottur.

Appellants respectfully submit that positively-recited limitations of the claims are not disclosed nor taught by the prior art even if the teachings of Ramsubramanian are combined with the teachings of Mottur and the Office has failed to establish a proper *prima facie* 103 rejection of the claims for at least this reason.

The claims recite generating video using photo-video acquisition devices comprising cameras, acquiring a high resolution photograph *using the video streamed from the one or more device (camera) as a view-finder* and receiving the high resolution photograph. These limitations are not disclosed nor suggested by the prior art even if the references are combined and the Office has failed to establish a proper *prima facie* 103 rejection for this additional reason.

Mottur teaches enabling a user to control a remotely located camera per paragraphs 0038, 0039. Ramsubramanian is directed with playback of video from a *previously stored video file 104* as disclosed at col. 3, lines 55+ and fails to disclose or suggest *generating video using cameras*. Ramsubramanian discloses provision of snapshots of frames of the previously generated and stored video file 104. *The combined teachings of Ramsubramanian and Mottur disclose snapshots of previously generated and stored video which is being played back* which fails to disclose or suggest the claimed *generating video using photo-video acquisition devices comprising cameras*, acquiring a high resolution photograph *using the video streamed from the one or more device (camera) as a view-finder* and receiving the high resolution photograph.

Positively-recited limitations of the claims are not disclosed nor suggested by the prior art even if the references are combined and Appellants respectfully submit the Office has failed to establish a proper *prima facie* 103 rejection for this additional reason.

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E. Positively-recited limitations of claims 34, 43 and 49 are not disclosed nor suggested by the prior art even if the teachings of Ramsubramanian are combined with the teachings of Mottur.

Appellants respectfully submit that positively-recited limitations of the claims are not disclosed nor taught by the prior art even if the teachings of Ramsubramanian are combined with the teachings of Mottur and the Office has failed to establish a proper *prima facie* 103 rejection of the claims for at least this reason.

The claims recite *capturing live video data of a scene using a camera, providing still image data using the captured live video data and communicating the still image data to the remote device.* These limitations are not disclosed nor suggested by the prior art even if the references are combined and the Office has failed to establish a proper *prima facie* 103 rejection for this additional reason.

Mottur teaches enabling a user to control a remotely located camera per paragraphs 0038, 0039. Ramsubramanian is directed with playback of video from a *previously stored video file 104* as disclosed at col. 3, lines 55+ and fails to disclose or suggest *capturing live video data of a scene using a camera*. Ramsubramanian discloses provision of snapshots of frames of the previously generated and stored video file 104. *The combined teachings of Ramsubramanian and Mottur disclose snapshots of previously generated and stored video which is being played back* which fails to disclose or suggest the claimed *capturing live video data of a scene using a camera, providing still image data using the captured live video data and communicating the still image data to the remote device.*

Positively-recited limitations of the claims are not disclosed nor suggested by the prior art even if the references are combined and Appellants respectfully submit the Office has failed to establish a proper *prima facie* 103 rejection for this additional reason.

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F. Positively-recited limitations of claim 27 are not disclosed nor suggested by the prior art even if the teachings of Ramsubramanian are combined with the teachings of Mottur.

Claim 27 recites *storing the video and high resolution photograph for a first time after the generating the video and the transmitting of the video and the high resolution photograph*. The only snapshot teachings of the combined prior art are disclosed by Ramsubramanian. However, Ramsubramanian clearly discloses communication of snapshots of data which was previously generated and stored as a video file 104. Accordingly, the combined teachings of the prior art refer to playback of video which was previously stored and generated and providing a snapshot of the previously generated and stored video. The teachings of Ramsubramanian must be considered in their entirety in view of MPEP 2141.02VI (8th ed., rev. 3) which provides that prior art references must be considered in their entireties including disclosures that teach away from the claims. The teachings of the prior art of providing a snapshot of content which was previously generated and stored in a video file teaches away from the limitations of claim 27 reciting the storing the video and photograph for the first time after the generating the video and transmitting the video and photograph. The teaching away is the antithesis of the art's suggesting that the person of ordinary skill go in the claimed direction. Essentially, teaching away from the art is a *per se* demonstration of lack of obviousness. *In re Dow Chemical Co.*, 837 F.2d 469, 5 USPQ2d 1529 (Fed. Cir. 1988).

Positively-recited limitations of the claims are not disclosed nor suggested by the prior art even if the references are combined and Appellants respectfully submit the Office has failed to establish a proper *prima facie* 103 rejection for this additional reason.

G. Positively-recited limitations of claim 34, 35, 37, 39, 42, and 46 are not disclosed nor suggested by the prior art even if the teachings of Ramsubramanian are combined with the teachings of Mottur.

The claims recite in varying forms that the *high resolution photograph has a resolution greater than a resolution of the video*. Mottur teaches communication of high resolution, high definition video transmissions at paragraphs 0023, 0024.

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There is no evidence of record that the teachings of Ramsubramanian with respect to low resolution video may be combined with Mottur to provide photographs having resolutions greater than a resolution of the high resolution, high definition video of Mottur.

Mottur is concerned with avoiding choppy video as set forth in paragraph 0005 and there is no evidence of record that Mottur is concerned with photographs let alone photographs having a resolution greater than a resolution of video. The modification of Mottur proposed by the Office is contrary to the teachings of Mottur inasmuch as bandwidth would be usurped to communicate the high resolution photographs degrading the quality of the video perhaps leading to choppy video with absolutely no benefits to the systems and methods taught by Mottur. The degradation in operation of the system of Mottur by the modification proposed by the Office is compelling evidence that there is no motivation to combine the reference teachings. MPEP 2143.01 V (8th ed., rev. 3) provides that if a proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification. *In re Gordon*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984). Claim 35 is allowable for at least these compelling reasons.

Positively-recited limitations of the claims are not disclosed nor suggested by the prior art even if the references are combined and Appellants respectfully submit the Office has failed to establish a proper *prima facie* 103 rejection for this additional reason.

H. There is insufficient motivation to combine the teachings of Suzuki with the teachings of Mottur and Ramsubramanian and the 103 rejection of claims 36 and 45 is improper for at least this reason.

At pages 25-26 of the Action, the Office states that limitations of claim 36 and 45 are absent from the combined teachings of Mottur and Ramsubramanian and the Office relies upon the teachings of Suzuki in support of the 103 rejection. Appellants respectfully submit there is insufficient motivation to combine the teachings of Suzuki and the Office has failed to meet their burden of establishing a proper *prima facie* 103 rejection for at least this reason.

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In particular, the claims recite the communications channel and the pipeline comprise different physical media configured to communicate electrical signals in parallel. The Office on page 26 of the Action alleges that the combination of Suzuki is appropriate so that the control and video signals can be transmitted on different lines in order to prevent cross talk in order to improve image quality.

Appellants initially note that there is no objective evidence of record that the arrangement of Suzuki could be combined with the teachings of Mottur and Ramsubramanian to provide an operable arrangement. In addition, there is no evidence of record that any improvement or advancement of the art would result from such a combination which would motivate one of skill in the art to combine the reference teachings. More specifically, Appellants have electronically searched Mottur and Ramsubramanian and have failed to uncover any reference to cross talk or that such references suffer from problems related to cross talk to motivate one to look for corrective teachings with respect thereto. Appellants respectfully assert that, in the absence of any objective evidence to support the combination, the Office has impermissibly relied upon Appellants' disclosure in formulating the 103 rejection. The motivation for forming the combination must be something other than hindsight reconstruction based on using Applicant's invention as a road map for such a combination. *See, e.g., In re Mills*, 16 USPQ2d 1430 (Fed. Cir. 1990).

Appellants respectfully submit the Office has failed to meet its burden of establishing a proper *prima facie* 103 rejection of the claims and Appellants respectfully request withdrawal of the 103 rejection in the next Action for at least this reason.

I. There is insufficient motivation to combine the teachings of Juen with the teachings of Mottur and Ramsubramanian and the 103 rejection of claims 38, 40, 41, 43, 44, and 47-49 is improper for at least this reason.

Referring to pages 20-25 of the Action, the Office states in support of the 103 rejection of the claims that the combination of Juen with Mottur and Ramsubramanian is appropriate in order to allow a user to acquire a high resolution image of the video image which is "better related" to the video images. Appellants respectfully submit that the alleged motivation is insufficient to establish a proper *prima facie* 103 rejection.

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The above-recited authority of *In re Lee* provides that the factual question of motivation is material to patentability and can not be resolved on subjective belief and unknown authority. Further, deficiencies of cited references cannot be remedied by general conclusions about what is basic knowledge or common sense and the determination of patentability must be based on evidence. In the instant rejection, there is *no evidence* to support the alleged motivation and the Office has failed to establish a *prima facie* rejection for at least this reason.

More specifically, on page 18 in support of the rejection, the Office baldly without support alleges that the camera of Juen is advantageous because it clearly relates still images to video images. The Office has not pointed to any teachings or other evidence in support of the allegation that Juen provides still images which are better related to video images as baldly alleged or that the combination of references would result in any improvement. Furthermore, there is no evidence of record that the combination of Mottur and Ramsubramanian suffers from any issues of the relationship of the still and video images to motivate one to look to Juen for meaningful teachings regarding allegedly providing a better relationship thereof. There is no evidence of record that any improvement would result from the combination of the teachings of Juen with the teachings of Mottur and/or Ramsubramanian. Contrary to the authority of the CAFC and MPEP, the Office has rejected the claims without evidence of motivation in support of the rejection.

Furthermore, Ramsubramanian already discloses providing snapshots which are of increased resolution than the resolution of the video taught by Ramsubramanian. Accordingly, Appellants respectfully submit that the teachings of Ramsubramanian provide high quality still images related to the respective video content and the teachings of Juen are redundant to these teachings of Ramsubramanian. Appellants respectfully submit it is inappropriate to rely upon a teaching of another reference when the reference being modified already provides teachings for which the other reference is provided.

Also, Ramsubramanian teaches that frames are identified when the camera button is depressed to provide snapshots as disclosed at col. 5, lines 25+. Accordingly, Ramsubramanian already discloses relationship teachings of still images and video for which Juen is provided. There is no evidence of record that the additional combination of Juen operates to allow a user to acquire images which

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are "better related" to video images as baldly alleged by the Office in view of the explicit frame identification teachings of Ramsubramanian. There is no evidence of any improvement to the combination of Mottur of Ramsubramanian being provided by the additional combination of the teachings of Juen. Moreover, the Juen teachings are redundant to the frame identification teachings of col. 5 of Ramsubramanian.

Appellants respectfully submit the Office has failed to meet its burden of establishing a proper *prima facie* 103 rejection of the claims and Appellants respectfully request withdrawal of the 103 rejection in the next Action for at least this reason.

J. There is insufficient motivation to combine the teachings of Juen with the teachings of Mottur and Ramsubramanian and the 103 rejection of claims 38, 41, 43, 44, and 47 is improper for at least this reason.

The claims recite in varying forms acquiring a photograph during capturing of video or generating of video comprising original generation of video of a scene for a first time or as viewed in real time. In addition to the lack of any evidence of any improvement resulting from the combination of Juen with the teachings of Mottur and Ramsubramanian, the explicit teachings of Ramsubramanian teach away from the combination proposed by the Office. In particular, Ramsubramanian clearly discloses an entirely different system communicating video information from a stored video file 104 contrary to the claimed acquiring a photograph during capturing of video or generating of video comprising original generation of video of a scene for a first time or as viewed in real time. In addition, Appellants also submit that significant modification would be required for the arrangement of Mottur and Ramsubramanian to further include the teachings of Juen in any rejection of the above-recited limitations. The proposed modification or combination of the prior art would require substantial reconstruction or redesign of the reference teachings and/or would change the principle of operation of the prior art and Appellants respectfully submit the teachings of the combined references are not sufficient to render the claims *prima facie* obvious. MPEP 2143.01VI (8th ed. rev. 3) citing *In re Retti*, 270 F.2d 810, 123 USPQ 349 (CCPA 1959).

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Appellants respectfully submit the Office has failed to meet its burden of establishing a proper *prima facie* 103 rejection of the claims and Appellants respectfully request withdrawal of the 103 rejection in the next Action for at least this reason.

K. Positively-recited limitations of claim 46 are not disclosed nor suggested by the prior art even if the teachings of Ramsubramanian are combined with the teachings of Mottur.

The claim recites the acquisition devices individually comprise a remote video camera configured to *acquire the videos and photographs of a live scene as originally viewed in real time for the first time by the respective remote video camera*. Mottur fails to disclose or suggest any teachings regarding photographs of a live scene and Ramsubramanian merely teaches providing a snapshot from previously generated video provided by a video file 104. Accordingly, the combined teachings of Mottur and Ramsubramanian fail to teach *acquiring the photograph of a live scene as originally viewed in real time for the first time by the respective video camera*.

Positively-recited limitations of the claims are not disclosed nor suggested by the prior art even if the references are combined and Appellants respectfully submit the Office has failed to establish a proper *prima facie* 103 rejection for this additional reason.

L. There is insufficient motivation to combine the teachings of Juen with the teachings of Mottur and Ramsubramanian and the 103 rejection of claims 48-49 is improper for at least this reason.

Claim 48 recites the remote device is configured to *acquire the photographs prior to storage of the videos used to acquire the photographs* and claim 49 recites the *providing the still image data comprises providing the still image data prior to the storage of live video data*. Ramsubramanian clearly discloses communication of snapshots of a previously generated and stored video file 104. Accordingly, the combined teachings of the prior art refer to playback of video which was previously stored and generated and providing a snapshot of the previously generated and stored video. The teachings of Ramsubramanian must be considered with respect

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to a 103 rejection in view of MPEP 2141.02VI (8th ed., rev. 3) which provides that prior art references must be considered in their entireties including disclosures that teach away from the claims. The teachings of the prior art of providing a snapshot of content which was previously generated and stored in a video file teaches away from the limitations of the claims recited above. The teaching away is the antithesis of the art's suggesting that the person of ordinary skill go in the claimed direction. Essentially, teaching away from the art is a *per se* demonstration of lack of obviousness. *In re Dow Chemical Co.*, 837 F.2d 469, 5 USPQ2d 1529 (Fed. Cir. 1988). There is no sufficient motivation to modify the teachings of Ramsubramanian in an entirely different direction to arrive at the subject matter of Appellants' claims 48-49 recited above regarding acquiring photographs or providing still image data prior to the storage.


Positively-recited limitations of the claims are not disclosed nor suggested by the prior art even if the references are combined and Appellants respectfully submit the Office has failed to establish a proper *prima facie* 103 rejection for this additional reason.

M. Conclusion

In view of the foregoing, reversal of the rejections of the claims is respectfully requested. For any one of the above-stated reasons, the rejections of the respective claims should be reversed. In combination, the above-stated reasons overwhelmingly support such reversal. Accordingly, Appellants respectfully request that the Board reverse the rejections of the claims.

Respectfully submitted,

Date: 8/17/06

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VIII. CLAIMS APPENDIX

1 1. [Previously Presented] A method for acquiring remote high
2 resolution photographs by a user using a streaming video as a view-finder,
3 comprising:
4 connecting a remote device to one or more photo-video acquisition
5 devices individually comprising a camera, wherein the remote device is
6 controlled by the user;
7 using a connected one of the cameras, generating a video of a scene
8 viewed using the respective camera;
9 acquiring a high resolution photograph from the remote device using the
10 video streamed from the one or more photo-video acquisition devices as a view-
11 finder; and
12 processing and transmitting the video and the high resolution photograph
13 obtained from the one or more photo-video acquisition devices.

1 2. [Original] The method of claim 1, wherein the connecting step
2 includes connecting the remote device to the one or more photo-video
3 acquisition devices through a network.

1 3. [Original] The method of claim 1, wherein the connecting step
2 includes connecting the remote device to the one or more photo-video
3 acquisition devices through a point-to-point connection.

1 4. [Original] The method of claim 1, further comprising:
2 requesting payment information from a user who wishes to control the
3 one or more photo-video acquisition devices; and
4 enabling the user to control the one or more photo-video acquisition
5 devices from the remote device.

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1 5. [Original] The method of claim 4, further comprising verifying the
2 payment information submitted by the user before enabling the user to control
3 the one or more photo-video acquisition devices.

1 6. [Original] The method of claim 4, wherein the acquiring step
2 includes using a queue system to allow multiple users to control the one or more
3 photo-video acquisition devices.

1 7. [Previously Presented] The method of claim 1, further comprising
2 storing the video and the high resolution photograph in a storage on a network
3 server.

1 8. [Original] The method of claim 1, further comprising sending the
2 video and the high resolution photograph to the user.

1 9. [Original] The method of claim 1, further comprising posting the
2 video and the high resolution photograph on a web page.

1 10. [Original] The method of claim 9, further comprising
2 requesting payment information from a user who wishes to download the
3 video and the high resolution photograph from the web page; and
4 enabling the user to download the video and the high resolution
5 photograph onto the remote device.

1 11. [Previously Presented] An apparatus for acquiring remote high
2 resolution photographs by a user using a streaming video as a view-finder,
3 comprising:
4 one or more photo-video acquisition devices capable of acquiring videos
5 and high resolution photographs;
6 a network linked to the one or more photo-video acquisition devices;
7 a remote device capable of logging onto the one or more photo-video
8 acquisition devices through the network and acquiring the high resolution

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9 photographs, using videos streamed from the one or more photo-video
10 acquisition devices as a view-finder; and
11 wherein the photo-video acquisition devices are remote video cameras.

1 12. [Original] The apparatus of claim 11, wherein the user can control
2 the one or more photo-video acquisition devices from the remote device through
3 the network or other communication channels.

1 13. [Original] The apparatus of claim 12, wherein the one or more
2 photo-video acquisition devices include a queue system that allows multiple
3 users to control the one or more photo-video acquisition devices.

1 14. [Original] The apparatus of claim 11, wherein the network includes
2 a storage on a network server to store the videos and the high resolution
3 photographs.

1 15. [Original] The apparatus of claim 11, wherein the videos and the
2 high resolution photographs are posted on a web page.

Claims 16-21 [canceled].

1 22. [Previously Presented] The method of claim 1, further comprising:
2 communicating a command from the user to the camera; and
3 altering an operation the camera with respect to the generation of the
4 video responsive to the command.

1 23. [Previously Presented] The method of claim 22, wherein the
2 communicating the command comprises communicating using a communications
3 channel different than a pipeline configured to communicate the video and high
4 resolution photograph.

1 24. [Canceled].

1 25. [Canceled].

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1 26. [Previously Presented] A method for acquiring remote high
2 resolution photographs by a user using a streaming video as a view-finder,
3 comprising:

4 connecting a remote device to one or more photo-video acquisition
5 devices individually comprising a camera, wherein the remote device is
6 controlled by the user;

7 using a connected one of the cameras, generating a video of a scene
8 viewed using the respective camera;

9 acquiring a high resolution photograph using the video streamed from the
10 one or more photo-video acquisition devices as a view-finder;

11 processing and transmitting the video and the high resolution photograph
12 obtained from the one or more photo-video acquisition devices;

13 communicating a command from the user to the camera; and

14 altering an operation the camera with respect to the generation of the
15 video responsive to the command.

1 27. [Previously Presented] The method of claim 1, further comprising
2 storing the video and the high resolution photograph for a first time after the
3 generating and the transmitting.

1 28. [Canceled].

1 29. [Previously Presented] The apparatus of claim 11, further
2 comprising a server coupled with the network and configured to host a web
3 page, wherein the server is configured to post the videos and high resolution
4 photographs generated using data acquired by the one or more photo-video
5 acquisition devices and to download the videos and high resolution photographs
6 to the remote device responsive to a command received from the remote device.

1 30. [Previously Presented] A method for a user to acquire remote high
2 resolution photographs using a streaming video as a view-finder, comprising:
3 logging onto one or more photo-video acquisition devices from a remote
4 device through a network;

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5 generating video using one or more of the photo-video acquisition devices
6 comprising cameras;
7 acquiring a high resolution photograph using the video streamed from the
8 one or more photo-video acquisition devices as a view-finder; and
9 receiving the high resolution photograph from the network.

1 31. [Previously Presented] The method of claim 30, further
2 comprising:
3 selecting a photo-video acquisition device from the one or more photo-
4 video acquisition devices for acquiring the high resolution photograph;
5 submitting payment information to control the selected photo-video
6 acquisition device through the network; and
7 controlling the selected photo-video acquisition device from the remote
8 device through the network.

1 32. [Previously Presented] The method of claim 30, further
2 comprising:
3 storing the high resolution photograph in a local storage; and
4 printing the high resolution photograph on a printer at home.

1 33. [Previously Presented] The method of claim 30, further comprising
2 receiving the video from the network at home.

1 34. [Previously Presented] An image data communication method
2 comprising:
3 providing a remotely located camera;
4 capturing live video data of a scene using the camera;
5 coupling a remote device with the camera using a network;
6 communicating captured live video data from the camera to the remote
7 device using the network, wherein the captured live video data has a first
8 resolution;
9 outputting a first command from the remote device;

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10 altering the capturing of the live video data of the scene using the camera
11 responsive to the first command;
12 outputting a second command from the remote device;
13 providing still image data using the captured live video data responsive to
14 the second command, wherein the still image data has a second resolution
15 greater than the first resolution; and
16 communicating the still image data to the remote device.

1 35. [Previously Presented] The method of claim 1, wherein the high
2 resolution photograph has a resolution greater than a resolution of the video.

1 36. [Previously Presented] The method of claim 23, wherein the
2 communications channel and the pipeline comprise different physical media
3 configured to communicate electrical signals in parallel.

1 37. [Previously Presented] The apparatus of claim 11, wherein the
2 high resolution photographs individually have a resolution greater than a
3 resolution of a respective one of the videos.

1 38. [Previously Presented] The method of claim 26, wherein the
2 acquiring comprises acquiring during the generating of the video comprising
3 original generation of the video of the scene for the first time.

1 39. [Previously Presented] The method of claim 26, wherein the high
2 resolution photograph has a resolution greater than a resolution of the video.

1 40. [Previously Presented] The method of claim 26, wherein the
2 processing and transmitting comprise processing and transmitting the video and
3 the high resolution photograph in parallel.

1 41. [Previously Presented] The method of claim 30, wherein the
2 acquiring comprises acquiring during the generating of the video comprising
3 original generation of the video of the scene for the first time.

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1 42. [Previously Presented] The method of claim 30, wherein the high
2 resolution photograph has a resolution greater than a resolution of the video.

1 43. [Previously Presented] The method of claim 34, wherein the
2 providing the still image data comprises providing the still image data during the
3 capturing of the live video data comprising original generation of the live video
4 data of the scene for the first time.

1 44. [Previously Presented] The method of claim 1, wherein the
2 acquiring comprises acquiring during the generating the video comprising
3 originally capturing the video of the scene as viewed in real time using the
4 respective camera.

1 45. [Previously Presented] The method of claim 36, wherein the
2 different physical media of the communications channel and the pipeline are
3 configured to simultaneously communicate different respective electrical signals.

1 46. [Previously Presented] The apparatus of claim 11, wherein the one
2 or more photo-video acquisition devices individually comprise a remote video
3 camera configured to acquire the videos and high resolution photographs of a
4 live scene as originally viewed in real time for the first time by the respective
5 remote video camera, and wherein the high resolution photographs have a
6 resolution greater than a resolution of the video.

1 47. [Previously Presented] The apparatus of claim 46, wherein the
2 remote video cameras are individually configured to acquire the high resolution
3 photographs during the generation of the video of the live scene.

1 48. [Previously Presented] The apparatus of claim 11, wherein the
2 remote device is configured to acquire the high resolution photographs prior to
3 storage of the videos used to acquire the high resolution photographs.

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- 1 49. [Previously Presented] The method of claim 34, wherein the
- 2 providing the still image data comprises providing the still image data prior to
- 3 storage of the live video data.

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IX. EVIDENCE APPENDIX

Appellants submit no evidence with this appellate brief.

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X. RELATED PROCEEDINGS APPENDIX

Appellants are not aware of any related proceedings.

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